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AMERIGO NAAMI

8  
9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION – SANTA ANA

12  
13 VINCENT K. TYLOR,

14 Plaintiff,

15 v.

16 DLS TRANSPORTATION INC., a  
California Corporation; AMERIGO  
17 NAAMI; and DOES 1 through 10,

18 Defendants.

CASE NO. SACV15-00957 JLS GJS

**DECLARATION OF STEPHEN D.  
COLLINS IN SUPPORT OF  
DEFENDANT'S NOTICE OF  
MOTION AND MOTION IN  
LIMINE AND FOR SANCTIONS  
TO DISMISS THE CASE,  
EXCLUDE TESTIMONY OF  
VINCENT K. TYLOR, OR ISSUE  
SANCTIONS AS THE COURT  
DEEMS APPROPRIATE**

**Date: September 16, 2016  
Time: 1:30 p.m.  
Courtroom 10A  
Honorable Josephine L. Staton**

**Trial Date: October 18, 2016**

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24 I, Stephen Collins, declare:

25 1. I am an attorney duly licensed to practice law in the State of California  
26 and am admitted to practice in the Central District of California. I am an attorney  
27 with the law firm of Tingley Law Group, PC, and represent Defendant, Amerigo  
28 Naami, in this matter. I have personal knowledge of the facts stated in this

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1 Declaration and, if called as a witness, I could and would competently testify to  
2 their truth.

3 2. Attached as Exhibit Nos. 1 and 2 are true and correct copies of email  
4 correspondences from Stephen Collins dated April 27, 2016.

5 3. Attached as Exhibit No. 3 is a true and correct copy of an email  
6 correspondence from Adam Gafni dated April 28, 2016.

7 4. Attached as Exhibit No. 4 is a true and correct copy of an email  
8 correspondence from Stephen Collins dated April 28, 2016.

9 5. Attached as Exhibit No. 5 is a true and correct copy of an email  
10 correspondence from Stephen Collins dated May 2, 2016.

11 6. Attached as Exhibit Nos. 6 and 7 are true and correct copies of email  
12 correspondences from Adam Gafni dated May 2, 2016.

13 7. Attached as Exhibit No. 8 is a true and correct copy of an email  
14 correspondence from Stephen Collins dated May 4, 2016.

15 8. Attached as Exhibit No. 9 is a true and correct copy of an email  
16 correspondence from my office dated May 4, 2016. Also attached, as Exhibit 10, is  
17 true and correct copy of Defendant's Notice of Deposition of TYLOR for  
18 May 13, 2016, which was an attachment to the email. Out of a spirit of  
19 cooperation, Defendant agreed to conduct TYLOR's deposition telephonically for  
20 TYLOR's convenience (Defendant could have required TYLOR to appear in  
21 person to a deposition within the Central District).

22 9. Attached as Exhibit No. 11 is a true and correct copy of an email  
23 correspondence from Adam Gafni dated May 4, 2016.

24 10. Attached as Exhibit No. 12 is a true and correct copy of an email  
25 correspondence from Stephen Collins dated May 4, 2016.

26 11. Attached as Exhibit No. 13 is a true and correct copy of an email  
27 correspondence from Adam Gafni dated May 4, 2016.

28 12. Attached as Exhibit No. 14 is a true and correct copy of an email

1 correspondence from Adam Gafni dated May 10, 2016. Attached as Exhibit 15 is a  
2 true and correct copy of Plaintiff's Objections to Defendant's Notice of Deposition  
3 of TYLOR.

4 13. Attached as Exhibit No. 16 is a true and correct copy of an email  
5 correspondence from Stephen Collins dated May 11, 2016.

6 14. Attached as Exhibit No. 17 is a true and correct copy of an email  
7 correspondence from Stephen Collins dated May 12, 2016.

8 15. Attached as Exhibit No. 18 is a true and correct copy of an email  
9 correspondence from Adam Gafni dated May 12, 2016.

10 16. Attached as Exhibit No. 19 is a true and correct copy of an email  
11 correspondence from Stephen Collins dated May 12, 2016.

12 17. Attached as Exhibit No. 20 is a true and correct copy of an email  
13 correspondence from my office dated May 12, 2016. Also attached as Exhibit 21 is  
14 a true and correct copy of Defendant's Amended Notice of Deposition of TYLOR  
15 for May 17, 2016, which was an attachment to this email.

16 18. Attached as Exhibit No. 22 is a true and correct copy of an email  
17 correspondence from Stephen Collins dated May 13, 2016.

18 19. Attached as Exhibit No. 23 is a true and correct copy of an email  
19 correspondence from Stephen Collins dated May 16, 2016.

20 20. Attached as Exhibit No. 24 is a true and correct copy of an email  
21 correspondence from Mellissa Wilson dated May 16, 2016. Attached as Exhibit  
22 No. 25 is a true and correct copy of correspondence from Adam Gafni dated  
23 May 16, 2016. Also, attached as Exhibit No. 26 is a true and correct copy of  
24 Plaintiff's Objections to Defendant's Amended Notice of Deposition of TYLOR.

25 21. The parties agreed upon and submitted a stipulation to the Court to  
26 allow the deposition of TYLOR to occur after the Discovery Cut-Off. In the  
27 stipulation TYLOR expressly agreed that Defendant shall have until June 24, 2016  
28 to conduct the oral telephonic deposition of Plaintiff. (Dkt. No. 28)

1           22. While the parties awaited the Court's response, the May 17, 2016  
2 deposition date came and TYLOR did not appear for his deposition. Defendant  
3 made a record of TYLOR's failure to appear for the May 17, 2016 deposition.  
4 Attached as Exhibit No. 27 is a certified copy of the deposition transcript for  
5 May 17, 2016 at which I appeared telephonically.

6           23. On May 23, 2016, the Court granted the parties' stipulated request  
7 allowing TYLOR's deposition to be taken on or before June 24, 2016. (Dkt.  
8 No. 29)

9           24. Attached as Exhibit No. 28 is a true and correct copy of an email  
10 correspondence from Stephen Collins dated May 25, 2016.

11           25. Attached as Exhibit No. 29 is a true and correct copy of an email  
12 correspondence from Stephen Collins dated June 1, 2016.

13           26. Attached as Exhibit No. 30 is a true and correct copy of an email  
14 correspondence from Adam Gafni dated June 1, 2016.

15           27. Attached as Exhibit No. 31 is a true and correct copy of an email  
16 correspondence from Stephen Collins dated June 1, 2016.

17           28. Attached as Exhibit No. 32 is a true and correct copy of an email  
18 correspondence from Adam Gafni dated June 6, 2016.

19           29. Attached as Exhibit No. 33 is a true and correct copy of an email  
20 correspondence from Adam Gafni dated June 6, 2016.

21           30. Attached as Exhibit No. 34 is a true and correct copy of an email  
22 correspondence from Stephen Collins dated June 6, 2016.

23           31. Attached as Exhibit No. 35 is a true and correct copy of an email  
24 correspondence from my office dated June 10, 2016. Also attached as Exhibit  
25 No. 36 is a true and correct copy of an email correspondence from Adam Gafni  
26 dated June 10, 2016.

27           32. Attached as Exhibit No. 37 is a true and correct copy of an email  
28 correspondence from Adam Gafni dated June 22, 2016.

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1           33. Attached as Exhibit No. 38 is a true and correct copy of an email  
2 correspondence from Adam Gafni dated June 22, 2016.

3           34. Attached as Exhibit No. 39 is a true and correct copy of an email  
4 correspondence from Stephen Collins dated June 22, 2016.

5           35. Attached as Exhibit No. 40 is a true and correct copy of an email  
6 correspondence from Stephen Collins dated June 24, 2016.

7           36. Despite TYLOR's agreement to stipulate to a further continuance of  
8 the timeframe to conduct the deposition, TYLOR ceased responding to Defendant's  
9 requests for updates and/or a stipulation. Defendant had previously communicated  
10 that the deposition would need to occur prior to the mediation. However,  
11 TYLOR's refusal to communicate, provide a stipulation, or any response to  
12 Defendant prevented that from occurring.

13           37. As such, at the mediation on July 12, 2016, in which TYLOR  
14 participated telephonically, Defendant again inquired about the stipulation to  
15 conduct TYLOR's deposition. TYLOR again reaffirmed that he would stipulate to  
16 allow his deposition to be taken. However, following the mediation, again,  
17 TYLOR failed to communicate, provide a stipulation, or provide any response to  
18 Defendant's requests for TYLOR's deposition.

19           38. Finally, at the Local Rule 16-2 Meeting of Counsel Before Final  
20 Pretrial Conference, I asked whether TYLOR would appear at a deposition.  
21 TYLOR's counsel firmly stated that TYLOR would not agree to appear for his  
22 deposition, believing that the parties were too close to trial and stating that it was  
23 Defendant's fault that it was unable to depose TYLOR. Thus, TYLOR finally  
24 confirmed explicitly what had become apparent: TYLOR had engaged in calculated  
25 and repeated conduct designed to allow TYLOR to avoid having his deposition  
26 taken.

27           39. However, despite TYLOR's difficulties with appearing for his  
28 deposition, he was listed as one of only three witnesses in TYLOR's Trial Witness

1 List. Attached as Exhibit No. 41 hereto is a true and correct copy of Plaintiff's  
2 Trial Witness List [L.R. 16-5] dated August 9, 2016. In fact, TYLOR appears to be  
3 his own primary witness based on the number of topics on which he will testify and  
4 the anticipated length of his testimony. Furthermore, while TYLOR indicated that  
5 he would not appear in the Central District for his deposition (nor would he appear  
6 telephonically near his residence in Hawaii), he has not indicated in any way that he  
7 will not appear in person to testify at trial.

8 40. I stated to TYLOR's counsel that Defendant would move *in limine* to  
9 preclude TYLOR's testimony at trial due to TYLOR's refusal to make himself  
10 available for a deposition. TYLOR's counsel's response was essentially "go  
11 ahead".

12 41. As such, I met and conferred with TYLOR's counsel regarding the  
13 present Motion. I explained that Defendant would seek sanctions and the exclusion  
14 of TYLOR's testimony at trial as a result of his knowing and willful failure to  
15 appear for his own deposition.

16 42. I certify, pursuant to FRCP 37(d)(1)(B), that I, in good faith, conferred  
17 with TYLOR's counsel in an effort to obtain his agreement to be deposed without  
18 Court action. However, such efforts were not only unsuccessful, but TYLOR's  
19 counsel went so far as to suggest that, in spite of his repeated representations that  
20 TYLOR would appear for his deposition with Defendant's accommodations, and  
21 Defendant's reliance on same, Defendant was "out of time" to receive any relief  
22 from the Court.

23 43. However, it is now clear that TYLOR was intentionally misleading  
24 Defendant to believe that he would appear to avoid a motion prior to the present  
25 time.

26 44. The prejudice TYLOR has caused Defendant includes the denial of a  
27 proper opportunity to prepare for TYLOR's testimony and cross-examination at  
28 trial.

1 I declare under penalty of perjury under the laws of the United States of  
2 America and the State of California that the foregoing is true and correct.

3 Executed on August 19, 2016, at San Jose, California.  
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5 \_\_\_\_\_ /s/ Stephen D. Collins

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